

EXHIBIT 5

Emails Between Counsel

RANDAZZA
LEGAL GROUP

Trey Rothell <tar@randazza.com>

Switch v. MTechnology | 2:17-cv-2651 | Correspondence & Discovery Responses

Anne-Marie Birk <abirk@switch.com>

Thu, Jul 16, 2020 at 10:19 AM

To: Sam Castor <sam@switch.com>, Ron Green <rdg@randazza.com>

Cc: Emily Shaevitz <eshaevitz@switch.com>, Trey Rothell <tar@randazza.com>, Policy <policy@switch.com>, Marc Randazza <mjr@randazza.com>, Alex Shepard <ajs@randazza.com>, Staff <staff@randazza.com>

Just for clarification, it would be an accommodation if Switch had requested that MTechnology make their weekends available. If, on the other hand, a party pushes an unwanted/unreasonable schedule, it is an imposition.



ANNE-MARIE BIRK
ASSOCIATE GENERAL COUNSEL

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+ Switch e-card

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From: Sam Castor <sam@switch.com>

Sent: Wednesday, July 15, 2020 5:17 PM

To: Ron Green <rdg@randazza.com>

Cc: Emily Shaevitz <eshaevitz@switch.com>; Trey Rothell <tar@randazza.com>; Anne-Marie Birk <abirk@switch.com>; Policy <policy@switch.com>; Marc Randazza <mjr@randazza.com>; Alex Shepard <ajs@randazza.com>; Staff <staff@randazza.com>

Subject: Re: Switch v. MTechnology | 2:17-cv-2651 | Correspondence & Discovery Responses

I'm sorry you have had to sacrifice your personal life like that. I will not.

Em will get us a call set up.

Thank you!

SAM CASTOR



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e sam@switch.com

From: Ron Green <rdg@randazza.com>

Date: Wednesday, July 15, 2020 at 4:56 PM

To: Samuel Castor <sam@switch.com>

Cc: Emily Shaevitz <eshaevitz@switch.com>, Trey Rothell <tar@randazza.com>, Anne-Marie Birk <abirk@switch.com>, Policy <policy@switch.com>, Marc Randazza <mjr@randazza.com>, Alex Shepard <ajs@randazza.com>, Staff <staff@randazza.com>

Subject: Re: Switch v. MTechnology | 2:17-cv-2651 | Correspondence & Discovery Responses

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Offering a weekend date is absolutely an accommodation for witnesses that claim their schedules are busy. I've offered it as an accommodation and accepted it as an accommodation several times in my career.

I agree that we should talk. I'm free at 10:00 a.m. until noon tomorrow and for most of the afternoon tomorrow.

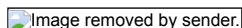
Ronald D. Green* | **Randazza Legal Group, PLLC**
2764 Lake Sahara Drive | Suite 109 | Las Vegas, NV 89117
Tel: 702-420-2001 | Email: rdg@randazza.com

* Licensed to practice law in Nevada.

On Jul 15, 2020, at 4:34 PM, Sam Castor <sam@switch.com> wrote:

How about we schedule a quick call?

SAM CASTOR



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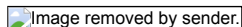
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From: Samuel Castor <sam@switch.com>
Date: Wednesday, July 15, 2020 at 4:27 PM
To: Ron Green <rdg@randazza.com>
Cc: Trey Rothell <tar@randazza.com>, Anne-Marie Birk <abirk@switch.com>, Policy <policy@switch.com>, Marc Randazza <mjr@randazza.com>, Alex Shepard <ajs@randazza.com>, Staff <staff@randazza.com>
Subject: Re: Switch v. MTechnology | 2:17-cv-2651 | Correspondence & Discovery Responses

BTW, offering to do the depo on a weekend is not an accommodation. 😊

SAM CASTOR



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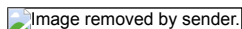
From: Samuel Castor <sam@switch.com>
Date: Wednesday, July 15, 2020 at 4:15 PM
To: Ron Green <rdg@randazza.com>
Cc: Trey Rothell <tar@randazza.com>, Anne-Marie Birk <abirk@switch.com>, Policy <policy@switch.com>, Marc Randazza <mjr@randazza.com>, Alex Shepard <ajs@randazza.com>, Staff <staff@randazza.com>
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Em will send you dates.

The rule only gives you one day for the depo. 120 days is what I need to avoid a fight.

Let me know.

SAM CASTOR



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From: Ron Green <rdg@randazza.com>
Date: Wednesday, July 15, 2020 at 4:11 PM
To: Samuel Castor <sam@switch.com>
Cc: Trey Rothell <tar@randazza.com>, Anne-Marie Birk <abirk@switch.com>, Policy <policy@switch.com>, Marc Randazza <mjr@randazza.com>, Alex Shepard <ajs@randazza.com>, Staff <staff@randazza.com>
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I realize that you said the 120 days is not negotiable, but given how long this case and discovery have been pending, my clients are not willing to extend fact discovery by 120 days, which would mean that expert discovery would continue into 2021. They are willing to extend by 90 days to accommodate Mr. Roy's deposition, which we think is very reasonable given that we offered concessions (weekends, smaller blocks of time) that you rejected. We certainly understand and don't want to impede family time for you or Mr. Roy, but we were only contemplating one weekend day for his deposition. If you would like to discuss how to proceed from here, I am available by email or by phone for most of the day tomorrow.

Additionally, please provide us with availability dates for document review next week as soon as possible so that I can ensure I leave my calendar open for it. Finally, I'd appreciate your best estimate as to the volume of documents we will be reviewing so that I know how many folks to bring with me.

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Ron,

I appreciate the offer. I wasn't picking 120 days randomly. That is the minimum of amount of time I need to schedule and it is not negotiable. His calendar if full until then.

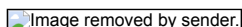
I could have started at 6-8 months and we could have ended at 120 days, but I'm going for efficiency. 😊 I appreciate the offer to do the depo on the weekend. However, he is usually booked then too. And I'm also personally unwilling to do this on a weekend. I need my weekends. Family time.

As for time frames, I'm unwilling to split it up and make this more time consuming that it needs to be. If you want a one time, sooner window, I **maybe** able to get some things canceled if the total depo (on and off the record) is around 3 hours.

If you want to keep going back and forth on this, we'll just oppose the depo all together. We're still well within our rights. He's the Apex. The law and case law are on our side. Happy to go back to that dialogue as well.

Happy Wednesday!

SAM CASTOR

 Image removed by sender.

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From: Ron Green <rdg@randazza.com>
Date: Wednesday, July 15, 2020 at 1:22 PM
To: Samuel Castor <sam@switch.com>
Cc: Trey Rothell <tar@randazza.com>, Anne-Marie Birk <abirk@switch.com>, Policy <policy@switch.com>, Marc Randazza <mjr@randazza.com>, Alex Shepard <ajs@randazza.com>, Staff <staff@randazza.com>
Subject: Re: Switch v. MTechnology | 2:17-cv-2651 | Correspondence & Discovery Responses

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Sam:

We're willing to continue discovery for 75 days. Additionally, we are willing to depose Mr. Roy on a mutually convenient weekend date or in blocks of 2-3 hours if that makes it easier for him.

With regard to document review, I did not realize that we had a firm offer to review this Friday. We have a significant filing in another case due that day, so it won't work. However, we can come in to your office to review documents next week. Give us some proposed dates and times. Additionally, are you able to

Randazza Legal Group, PLLC | Switch v. MTechnology | 2:17-cv-2651 | Correspondence & Discovery Responses

estimate the volume of documents we will be reviewing? I will be bringing an associate and possibly a paralegal with me, and I'd like to know how many people I should be bringing.

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On Jul 15, 2020, at 11:25 AM, Sam Castor <sam@switch.com> wrote:

Ron,

Rob is a CEO of a multi-billion-dollar corporation. I need more than 60 days to block a whole day. His calendar is booked out 120 days in advance (especially in light of the corona virus). We're agreeing to have him depose via video conference. That is a material concession and avoids the likely 3-6 month delay inherent in motion practice. I'm not trying to delay. Just being realistic.

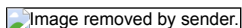
I assume you want to depose him for the whole day. If you want to stipulate to **3 hours** that would make it easier to find an earlier date. Please let me know.

We informed you on our last call we would have the docs produced on site for review this Friday. We'll have screens avail. You can tell us what emails you want duplicated and redacted per our protocol. As we discussed, you were going to get back to us if this Friday worked. Does this date not work for you? We can do next week as well. Happy to work with your schedule.

If you're supplementing your discovery today as set forth in our meet and letter, that's great. We'll await your docs.

Happy to have another call today if helpful,

SAM CASTOR



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From: Ron Green <rdg@randazza.com>
Date: Wednesday, July 15, 2020 at 11:12 AM
To: Samuel Castor <sam@switch.com>
Cc: Trey Rothell <tar@randazza.com>, Anne-Marie Birk <abirk@switch.com>, Policy <policy@switch.com>, Marc Randazza <mjr@randazza.com>, Alex Shepard <ajs@randazza.com>, Staff <staff@randazza.com>
Subject: Re: Switch v. MTechnology | 2:17-cv-2651 | Correspondence & Discovery Responses

Thanks for agreeing to produce Mr. Roy for deposition. We are willing to extend for 60 days. Mr. Roy should be able to find an available date at some point between now and the end of September.

Additionally, you informed me that we would have dates for document review last week. Specifically, you represented that we should have proposed dates for this week. We have not received them yet and would condition an extension on our ability to review documents prior to the commencement of our clients' depositions. We will be supplementing our discovery responses today.

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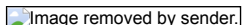
On Jul 14, 2020, at 6:37 PM, Sam Castor <sam@switch.com> wrote:

We will agree to have Rob deposed. But we will need a 120 extension to ensure his availability.

Agreed?

Sent from my phone - please excuse brevity and typos.

SAM CASTOR

 Image removed by sender.

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On Jul 14, 2020, at 6:22 PM, Ron Green <rdg@randazza.com> wrote:

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Sam:

I suggested that we ask the Court for a conference. You suggested an extension of 45 to 60 days, and I said I could not commit to anything without talking to my clients first. I will discuss this email with my clients but cannot do so tonight. They are on the east coast, and it is nearly 9:30 there. I disagree that we are trying to annoy Rob

Randazza Legal Group, PLLC | Mail | Switch | MTechnology | Docv 2014 | Correspondence & Discovery Responses
Roy. Not only do you allege that he invented the at-issue technology himself, your complaint also references a 4 hour, one-on-one discussion between Roy and Mr. Fairfax.

I will send your email to my clients this evening and discuss its contents with them in the morning.

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* Licensed to practice law in Nevada.

On Jul 14, 2020, at 5:37 PM, Sam Castor <sam@switch.com> wrote:

Ron,

You not agreeing is not what any of us recall. We continued the depositions upon *your* suggestion/request for an extension of 45 days.

I'm not trying to trap you. We all agreed we needed more time to get the discovery out. There is no magic to this. It's a global pandemic. We even discussed how the Court likely would grant it as a matter of course. Let's get the discovery out, let's do a couple depositions. Then let's have a settlement discussion.

As for the pleadings support it argument, I disagree. Rob is the inventor, yes, but his team has been using his inventions for over twenty years. They are very aware of the designs. Ask the questions of the witnesses in the 3 depositions we've agreed to. I'm confident they will have the answers. If you can demonstrate that Rob is still necessary and you couldn't get the information from the other witnesses, then I will act in good faith to make him available. He's an exceptional witness and will tear you apart. He's just extremely busy as our CEO and I don't want to waste his time which is why the Apex rule exists.

I've attached a copy of one of the orders I could get quick access to this late in the day. It's a TTAB proceeding but is governed by the same FRCP/FRE rule sets.

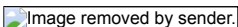
Happy to send more... your trying to depose him is a matter of annoyance, not legitimate need.

If you don't (re)agree to the extension tonight, we'll be re-noticing the depositions within the discovery window that exists. It will be a waste of time after we all agreed to move this out 45 days. And I suspect you'll object and we'll be back here all over again.

Let's not waste time. Let's just move this out and get the facts on the table so we can have a discussion as calm, reasonable attorneys.

Happy Tuesday!

SAM CASTOR

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From: Ron Green <rdg@randazza.com>
Date: Tuesday, July 14, 2020 at 10:24 AM
To: Samuel Castor <sam@switch.com>
Cc: Trey Rothell <tar@randazza.com>, Anne-Marie Birk <abirk@switch.com>, Policy <policy@switch.com>, "mhutchison@hutchlegal.com" <mhutchison@hutchlegal.com>, Jacob Reynolds <jreynolds@hutchlegal.com>, "ptueller@hutchlegal.com" <ptueller@hutchlegal.com>, Marc Randazza <mjr@randazza.com>, Alex Shepard <ajs@randazza.com>, Staff <staff@randazza.com>
Subject: Re: Switch v. MTechnology | 2:17-cv-2651 | Correspondence & Discovery Responses

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Sam:

During our call, I said that I would need to discuss with my client prior to agreeing to another discovery extension.

Additionally, I am well-aware that courts often protect high level executives from being deposed in litigation. However, one of the requirements is that the high level executive must not possess unique personal knowledge of disputed issues. Your pleadings allege that Mr. Roy has unique knowledge with regard to numerous issues relevant in this case. I will discuss the issue one more time with my clients and get back to you. You do state that you have won motions on similar fact patterns before. Can you provide me with a motion or order where you have prevailed with a fact pattern similar to the issues here?

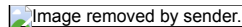
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Tel: 702-420-2001 | Email: rdg@randazza.com

* Licensed to practice law in Nevada.

On Jul 14, 2020, at 10:07 AM, Sam Castor <sam@switch.com> wrote:

Ron,

Just as a reminder, we continued our depositions upon our agreement yesterday that we would continue discovery at least 45 days. It's unfortunate that you are now taking this position. Please help us facilitate this as agreed. If not, we'll be forced to take this to the court, and will seek our fees and costs.



SAM CASTOR

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From: Samuel Castor <sam@switch.com>
Date: Tuesday, July 14, 2020 at 9:18 AM
To: Trey Rothell <tar@randazza.com>, Anne-Marie Birk <abirk@switch.com>
Cc: Policy <policy@switch.com>, "mhutchison@hutchlegal.com" <mhutchison@hutchlegal.com>, Jacob Reynolds <jreynolds@hutchlegal.com>, "ptueller@hutchlegal.com" <ptueller@hutchlegal.com>, "Marc J. Randazza" <mjr@randazza.com>, Ron Green <rdg@randazza.com>, Alex Shepard <ajs@randazza.com>, Staff <staff@randazza.com>
Subject: Re: Switch v. MTechnology | 2:17-cv-2651 | Correspondence & Discovery Responses

Ron,

As discussed, we are open to discussing Rob Roy as a witness *after* we have produced the other witnesses. The case law is clear. We've have won motions on this. You are only entitled to take the deposition of an Apex witness (e.g. the CEO) *after* you have taken other witnesses and proven that you could not get the data elsewhere. I and Missy Young have been working for Rob for over 30 years collectively.

If after you take our depositions you feel it is critical to take Rob's deposition, then we are open to having that discussion. However, I am confident between myself and Missy we will be able to answer all the questions that you have.

Please let me know so we can avoid motion practice.

Hope you're well.

From: Trey Rothell <tar@randazza.com>
Date: Monday, July 13, 2020 at 5:06 PM
To: Samuel Castor <sam@switch.com>, Anne-Marie Birk <abirk@switch.com>
Cc: Policy <policy@switch.com>, "mhutchison@hutchlegal.com" <mhutchison@hutchlegal.com>, Jacob Reynolds <jreynolds@hutchlegal.com>, "ptueller@hutchlegal.com" <ptueller@hutchlegal.com>, "Marc J. Randazza" <mjr@randazza.com>, Ron Green <rdg@randazza.com>, Alex Shepard <ajs@randazza.com>, Staff <staff@randazza.com>
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Dear Counsel,

Please find enclosed correspondence from attorney Ron Green regarding the deposition of Mr. Rob Roy.

Additionally, please find attached Defendant MTechnology Inc.'s Responses to Plaintiff's Fourth Set of Requests for Production of Documents.

The referenced documents are available on our Dropbox at the link below:

[REDACTED]

Please note that these documents being produced are labeled HIGHLY CONFIDENTIAL.

I will send the password shortly via separate email.

Thank you,

Trey A. Rothell* | **Randazza Legal Group, PLLC**
2764 Lake Sahara Dr., Suite 109, Las Vegas, NV 89117
Tel: (702) 420-2001 | Email: tar@randazza.com

* Law clerk – not licensed to practice law.

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<32. Board_Motion to Strike Granted_Filed 3.28.18.pdf>